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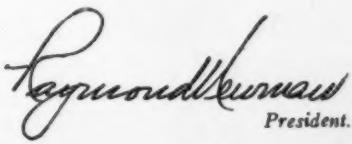
THE CORPORATION TRUST COMPANY AND ASSOCIATED COMPANIES

In the incorporation, qualification and statutory representation of corporations, The Corporation Trust Company, C T Corporation System and associated companies deal with and act for lawyers exclusively.

A number of interesting cases involving franchise taxes are digested in this issue. An Alabama decision is to the effect that a foreign corporation leasing mining land and equipment in Alabama to a wholly owned subsidiary is subject to a franchise tax based on such capital employed in Alabama, where the capital had not been included in the basis of the subsidiary's franchise tax. (Page 299.) The Supreme Court of Louisiana has ruled that, in arriving at the basis of a Louisiana corporation's franchise tax, its investments in shares of a foreign corporation are to be allocated to Louisiana. (Page 302.) A Pennsylvania Federal court has held that the State of New Jersey may collect its franchise taxes levied upon a corporation prior to receivership, during its receivership and after the commencement of proceedings in connection with the same company under Section 77B. (Page 304.) In a New York decision, a real estate corporation which had been dissolved for failure to pay state taxes was held to be without capacity to maintain a court action. (Page 296.)



President.

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The Corporation Journal is published by The Corporation Trust Company, monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

Contents for January

What Constitutes Doing Business*

Installation of Machinery Sold in Interstate Commerce

Where machinery is sold in interstate commerce and the purchaser installs it without any assistance from the seller, there is, of course, no necessity for the seller to qualify to do business.[1]

Where the installation of machinery sold in interstate commerce is made by the seller and no particular skill is required to be exercised in the installation, qualification is necessary as such activity constitutes "doing business."[2]

Where the installation of machinery sold in interstate commerce by an unlicensed foreign corporation is a highly technical installation of intricate mechanism, the installation is held to be an integral part of the interstate commerce and the corporation is not required to be qualified.[3]

Where the installation of machinery sold in interstate commerce, even though involving a highly intricate and technical installation, requires many and varied operations over a long period, the corporation will be regarded as doing business and will be required to qualify.[4]

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[1]**Alabama:** *Vest v. Night Commander Lighting Co.*, 139 So. 295. **Arkansas:** *Crawford v. Louisville Silo & Tank Co.*, 265 S. W. 355. **Kentucky:** *Western Silo Co. v. Johnson*, 262 S. W. 1093. **Minnesota:** *American Bridge Co. v. Honstain*, 128 N. W. 1014. **New Mexico:** *Abner Mfg. Co. v. McLaughlin*, 64 P. (2d) 387. **Texas:** *Abner Mfg. Co. v. Nevels*, 118 S. W. (2d) 607.

[2]**Arkansas:** *Hogan v. Intertype Corp.*, 136 Ark. 52, 206 S. W. 58. **Georgia:** *Browning v. Waycross*, 233 U. S. 16. **Minnesota:** *Palm Vacuum Cleaner Co. v. Bjornstad et al.*, 161 N. W. 215. **Tennessee:** *Lummus Cotton Gin Co. v. Arnold et al.*, 269 S. W. 706. **Texas:** *Bryan v. S. P. Bowser & Co.*, 209 S. W. 189; *Elliott Electric Co. v. Clevenger*, 300 S. W. 91. **Wisconsin:** *Loomis v. Peoples Construction Co.*, 211 Fed. 453.

[3]**Alabama:** *Cobb v. York Ice Machinery Co.*, 159 So. 811. **Delaware:** Chapter 138, Laws of 1929 provides that a foreign corporation is not to be deemed doing business under such circumstances. **Illinois:** *Black-Clawson Co. v. Carlyle Paper Co.*, 133 Ill. App. 61. **Indiana:** *Vilter Mfg. Co. v. Evans*, 154 N. E. 677. **Kansas:** *Kaw Boiler Works Co. v. Interstate Refineries, Inc.*, 236 Pac. 654, 269 U. S. 595. **Kentucky:** *United Iron Works Co. v. Watterson Hotel Co.*, 206 S. W. 166. **Michigan:** *Moline Furniture Works v. Club Holding Co.*, 274 N. W. 338. **Minnesota:** *J. C. Boss Engineering Co. v. Gunderson Brick & Tile Co.*, 209 N. W. 876. **Missouri:** *Hess Warming & Ventilating Co. v. Burlington Grain Elevator Co.*, 217 S. W. 493; *Kaw Boiler Works Co. v. Interstate Refineries, Inc.*, 236 Pac. 654, 269 U. S. 595. **Montana:** *General Fire Extinguisher Co. v. N. W. Auto Supply Co.*, 211 Pac. 308. **Oklahoma:** *Metal Door & Trim Co. v. Hunt et al.*, 39 P. (2d) 72. **Pennsylvania:** *Williams, Inc. v. Golden & Crick*, 247 Pa. 397, 93 A. 505. **South Dakota:** *Flint & Walling Mfg. Co. v. McDonald et al.*, 114 N. W. 684. **Tennessee:** *Davis & Rankin Bldg. & Mfg. Co. v. Caigle*, 53 S. W. 240. **Texas:** *York Mfg. Co. v. Colley*, 247 U. S. 21. **Utah:** *Advance-Rumley Thresher Co. v. Stohl*, 283 Pac. 731. **Vermont:** *Kinnear & Gager Mfg. Co. v. Miner*, 96 A. 333. **Wisconsin:** *Pfaudler Co. v. Westphal*, 209 N. W. 700.

[4]**Arkansas:** *Kansas City Structural Steel Co. v. State of Arkansas*, 269 U. S. 148. **California:** *Perkins Mfg. Co. v. Clinton Construction Co. of Cal.*, 295 Pac. 1. **Michigan:** *Haughton Elevator & Machine Co. v. Detroit Candy Co., Ltd.*, 120 N. W. 18. **Missouri:** *National Refrigerator Co. v. Southwest Missouri Light Co.*, 231 S. W. 930. **New Hampshire:** *Ensign v. Christianson et al.*, 109 Atl. 857. **South Dakota:** *Mandel Bros. Inc. v. Henry A. Oneil, Inc.*, 69 F. (2d) 452. **Texas:** *S. R. Smythe Co. v. Ft. Worth Glass & Sand Co.*, 142 S. W. 1157. **Virginia:** *General Railway Signal Co. v. Commonwealth*, 246 U. S. 500; *Western Gas Co. v. Commonwealth*, 136 S. E. 646, affirmed 276 U. S. 597. **Wyoming:** *Interstate Construction Co. v. Lakeview Canal Co.*, 224 Pac. 850.

This is one of a series of articles on What Constitutes Doing Business. See page 310 for a list of pamphlets obtainable on this important subject.

Illinois.

Recovery allowed where subscription was made to stock in a company to be formed and where stock of another company, subsequently formed, was tendered; interest granted from date of demand of return of principal. In 1932, plaintiff gave defendant his check for $1,000. and received a receipt for that amount which stated that it was for 10 shares of a total of 1,000 shares of $100. par stock of the Smith Insulating Manufacturing Company. This company was never formed, but in 1933 the International Vermiculite Company was formed by defendant and his associates, with an entirely different capital structure from that proposed for the Smith Company. Four years passed without any demand by plaintiff for a certificate of stock, during which time plaintiff was in the employ of a company in which defendant was a vice-president. Upon being discharged from that employment, plaintiff demanded a return of the $1,000. and, after filing suit, a certificate for 10 shares of no par common stock of the International company was tendered to him. Defendant contended there was a ratification by plaintiff of the investment of the $1,000. in the company which was actually formed. The court, after an examination of the circumstances, giving special weight to the employer and employe relationship, affirmed a judgment for the plaintiff, concluding that there was no such ratification. Interest was allowed from the date plaintiff made his demand for the return of the money, the court observing: "It is very generally held that in the absence of a special agreement as to interest, or as to the time the debt is to be paid, interest should be allowed on such debt only from the time the principal is demanded, or in the absence of prior demand, from commencement of suit." *Scharf v. Solomon,* 17 N. E. 2d 240. Commerce Clearing House Court Decisions Requisition No. 203332. Barber & Barber of Springfield, for appellant. Homer D. McLaren of Springfield, for appellee.

Kentucky.

Corporation, purchasing entire assets of another corporation, held liable for debt of company whose assets were purchased. The appellee had furnished labor and services to a company whose entire assets had been purchased by appellant, which sought, in this action, to have a judgment for the amount due, recovered against appellant, set aside. No question had been raised concerning the correctness of the items making up the account. The Kentucky Court of Appeals made the following remarks concerning the evidence submitted: "While there is some evidence to support appellant's contention that it acted in good faith in the purchase of the assets of the old corporation and paid a just and adequate consideration therefor, yet the fact that there was only a slight change in the corporation name and the

same business was conducted by the same officers and personnel in the same office and many other proven facts and circumstances so preponderate to sustain the chancellor in finding otherwise, as would forbid interference upon the part of the appellate court." In upholding a judgment for the appellee, the court quoted from a prior decision, *American Railway Express Company v. Commonwealth,* 190 Ky. 636, 228 S. W. 433, as follows: "Questions concerning the responsibility of the purchasing corporation for the debts and liabilities of the selling corporation have come before the courts of the country in many cases, and it is held practically without dissent, that, although the purchasing corporation does not assume the payment of any of the debts or liabilities of the selling corporation, it will yet be made responsible for them; if there was not consideration for the sale, or it was not in good faith, but for the purpose of defeating the creditors of the selling corporation or where there has been a merger or consolidation of the corporations, or where the purchasing corporation took over from the stockholders all of the stock of the selling corporation, or where the transaction amounts to a mere reincorporation or reorganization of the selling corporation. It is also generally agreed that when these conditions exist the purchasing corporation will be responsible for all the debts and liabilities of the selling corporation, without reference to whether these debts or liabilities were created by contract or arose out of tort, or were liquidated or unliquidated." *Payne-Baber Coal Company of Kentucky v. G. E. Butler, Doing Business Under the Firm Name of Big Sandy Electrical and Repair Company,* Kentucky Court of Appeals, October 18, 1938. Commerce Clearing House Court Decisions Requisition No. 203589.

New Jersey.

President held clothed with authority to employ and authorize an attorney to institute suit at law in behalf of his corporation. "Does a president of a corporation, as such, have authority to employ and authorize an attorney to institute suit at law in behalf of his corporation?" Stating that "the question here requiring decision is one of first impression with us," the Supreme Court of New Jersey observed that there were authorities holding that the president had no such power, and that "on the other hand, there is also a body of respectable authority to the effect that a president of a corporation, as such, may employ and authorize counsel to institute a suit in behalf of his corporation," and asked the further question: "Which view shall we adopt?" Reasoning from a prior decision, (*Beebe v. Beebe Co.,* 64 N. J. L. 497, 46 A. 168), to the effect that a president of a corporation may take the necessary steps in defense of litigation prosecuted against his corporation in order to preserve the corporate assets, the court ruled that "so, in reason and justice, he may employ and authorize counsel to institute necessary legal proceedings for the like purpose of preserving the interests of his corporation." The decision was rendered in a case where the stockholders were equally divided in vote, the president heading one faction and the treasurer, the defend-

ant, who was indebted to the corporation for an amount for which the action was brought, leading the other faction. *Elblum Holding Corporation v. Mintz,* 1 A. 2d 204. Commerce Clearing House Court Decisions Requisition No. 202628. Israel B. Greene of Newark, for appellant. Milton M. Unger of Newark, for appellee.

New York.

Real estate corporation, dissolved for failure to pay state taxes, held to be without right to maintain court action. Plaintiff, a domestic corporation, which had been dissolved by proclamation of the Secretary of State for non-payment of taxes under section 203-a of the Tax Law, was denied the right to maintain a suit by the City Court of New York, New York County. "It is legally dead," said the court, "and cannot take advantage of privileges of suit conferred by section 29 of the General Corporation Law upon a corporation dissolved under the ordinary provisions of the laws applicable to corporations or by a special act of the legislature, but which has not, for failure to meet its tax obligations to the State, been deprived by the State of its corporate existence." *Seventy-Three First Ave. Corporation, Inc. v. Braunstein Bros. Carbonic Sales Corporation,** 6 N. Y. S. 2d 664. Michael Vitiello of New York City, for plaintiff. Shearman & Sterling (Harold A. Callan and George C. Seward, of counsel) of New York City, for defendant.

* The full text of this opinion is printed in **The Corporation Tax Service, New York, page 249.**

Individual minority stockholder, sued by corporation for money claimed due it, permitted to set up counterclaim against corporation and directors for mismanagement of corporate affairs, for an accounting and for restitution of money improperly received by directors. "The plaintiff, a small, closely held corporation, originally brought this action against the defendant for moneys claimed to be due it because of excess withdrawals in anticipation of extra salary profits and credits. The defendant, a minority stockholder, set up in his answer a counterclaim against the corporation and its directors for their mismanagement of the corporate affairs, an accounting, the restitution of moneys improperly received by these directors and the payment to defendant of his share of the corporate income thus misappropriated by these directors." The New York Supreme Court, Appellate Division, Third Department, held that the counterclaim was proper under section 266 of the Civil Practice Act. "It is to be noted," observed the court, "that this section is new and very broad in its terms and that the practice with respect to the allowance of counterclaims has been greatly liberalized." *Gilbert Geer, Jr. & Co., Inc. v. Fagan,* 7 N. Y. S. 2d 395. Commerce Clearing House Court Decisions Requisition No. 204479. H. P. Humphrey of Troy, for plaintiff-respondent. Tierney & Kenney of Troy, for defendant-appellant.

Utah.

Agreement of stockholders with automobile manufacturer to have additional capital available by a specified date, as an inducement that manufacturer grant company a distributorship of automobiles, held not to furnish receiver of stockholders' company with cause of action to recover from stockholders, who had made no subsequent payments to capital of company. The defendants, as stockholders of the company for which plaintiff was receiver, had signed a letter addressed to an automobile manufacturer in which it was agreed that, if the manufacturer granted a distributorship to the company on a certain date, additional capital would be obtained on specified dates, aggregating $35,000. The distributorship was granted. The $35,000 was not, however, paid by the stockholders or otherwise obtained, and, the company becoming insolvent, plaintiff was appointed receiver and thereupon brought suit against the stockholders on the theory they were obligated to make payments into the capital stock of the company. The Utah Supreme Court, however, upheld a dismissal of the suit by the lower court, holding that the letter could not be made the basis of a contract of subscription to the company's stock, that the defendants were not estopped, as against creditors, to deny they guaranteed to the company a specified paid in capital and that there was not established by the evidence a contract between the stockholders and the automobile manufacturer for the benefit of the creditors of the company. *Kelly v. Richards et al.*, Utah Supreme Court, November 4, 1938. Commerce Clearing House Court Decisions Requisition No. 204351.

Foreign Corporations

Idaho.

Home Owners' Loan Corporation, incorporated under Federal law, is not to be regarded as a foreign corporation in Idaho and therefore need not be registered as a foreign corporation in order to maintain suit. In an action by the Home Owners' Loan Corporation to foreclose a mortgage, it was contended that the suit might not be maintained because the corporation was not licensed to transact business in Idaho. The Supreme Court of Idaho, in disposing of this contention, noted that under the Federal law creating the company it was made an instrumentality of the United States with authority to sue and be sued in any court of competent jurisdiction, federal or state, and the court ruled that "It is not a foreign corporation within the meaning of I. C. A., sec. 29-501 et seq., requiring foreign corporations, before doing business in this state, to file for record with the secretary of state a certified copy of its articles of incorporation and to do other acts in our statute specified." *Home Owners' Loan Corporation v. Stookey et ux.*, 81 P. 2d 1096. Ben F. Tweedy of Lewiston, for appellants. Durham & Hyatt of Lewiston, for respondent.

New York.

Service of process set aside where made upon a salesman taking orders in interstate commerce, who varied prices at times from those in the corporation's price list and collected accounts due the company. The New York Supreme Court, Appellate Division, Third Department, has ruled that service of process was properly vacated where made upon a salesman of a foreign corporation who merely took orders in New York for merchandise, which orders were to be filled by shipment from either a point in Iowa or in Pennsylvania to the customers contacted, and that such a salesman was not a managing agent who might be served on behalf of the corporation, where his managerial agency was predicated from the fact that he may at times have varied prices from those quoted in the price list, and collected accounts due defendant corporation. *Wheeler v. Dr. Salsbury's Laboratories,** 6 N. Y. S. 2d 933. Harold R. Altus of Albany, for appellant. O'Connell & Aronowitz (Stanton Ablett, of counsel) of Albany, for respondent.

*The full text of this opinion is printed in **The Corporation Tax Service, New York, page 251.**

Pennsylvania.

Court retains jurisdiction where issue before it relates to foreign corporation's title to property and is not concerned with internal management of its affairs. Two stockholders of defendant Ohio corporation, one a resident of New York and the other a resident of Ohio, brought this action in the United States District Court, Eastern District of Pennsylvania, against the Ohio corporation and defendant Jones, a resident of Pennsylvania, in behalf of the company, "to protect an asset which, it is alleged, is in danger of being lost to it and which the corporation itself, by reason of the refusal of its directors to act, is unable to protect." Defendant Jones moved to stay the proceedings, invoking the rule "that a court in the exercise of a sound discretion will decline to interfere with the internal management of the affairs of a foreign corporation if the courts of the corporation's domicile can deal with the dispute more conveniently, efficiently and justly." The court pointed out that the main issue before it related not to the management of the company's affairs but was concerned with its right and title to an asset, and observed that the court undoubtedly had jurisdiction, which the plaintiffs had invoked, as they had a right to do. The motion was therefore denied. *Jacobs et al. v. Master Tire & Rubber Corporation et al.*, United States District Court, Eastern District of Pennsylvania, September 27, 1937. Commerce Clearing House Court Decisions Requisition No. 203500. George J. Shorr, Milton Apfelbaum, Wolf, Block, Schorr & Solis-Cohen of Philadelphia, for the plaintiffs. Harry E. Sprogel, Earle G. Harrison, Saul, Ewing, Remick & Saul of Philadelphia, for the defendants.

Taxation

Alabama.

Foreign corporation, leasing mining land and equipment in Alabama to wholly owned subsidiary, held subject to franchise tax based on such capital employed in Alabama, where it had not been included in basis of the subsidiary's franchise tax. The appellant company, a Delaware corporation, authorized to do business in Alabama, owned a large tract of coal lands in that state, together with miners' villages and machinery. It did not, however, operate this property itself, but leased it to a subsidiary company, also a foreign corporation, all of whose stock it owned, the lease being on a royalty basis, with differentials as to coal mined with the aid of appellant's mining equipment. The appellant seeks a review of a franchise tax assessment made against it by the State Tax Commission, based on the actual amount of capital employed in Alabama, the Commission having measured the tax according to the value of the property leased. The subsidiary company did not include the properties in reporting its franchise tax for assessment. The Supreme Court of Alabama, after noting that both companies had the same directorate and officers and that a common president was the manager of the corporate enterprise, acting in his capacity of president of the subsidiary, ruled that the parent company, the appellant, was properly chargeable with the tax assessed against it, as "such tax cannot be evaded by conducting the business wholly in the name of the foreign subsidiary, as lessee. To permit two foreign corporations, one the beneficiary of all corporate activity, the other its subsidiary agency for operating purposes, to employ capital in their corporate enterprise in this State, and neither pay a franchise tax on the capital so employed is to evade the franchise tax law." *Consolidated Coal Co. v. State,** 183 So. 650. Coleman, Spain, Stewart & Davies and J. S. Mead, of Birmingham, for appellant. A. A. Carmichael, Atty. General, and Walter J. Knabe, Asst. Atty. General, for appellee.

* The full text of this opinion is printed in **The Corporation Tax Service**, Alabama volume, page 1554.

Canada.

Provision for payment to the Government of excess amounts collected under consumption or sales tax requirements, held void. Section 119 of the Special War Revenue Act provided that those liable to pay or collect the Dominion of Canada consumption or sales tax who collected any in excess of the amount imposed as the tax, "shall pay to His Majesty all moneys so collected, and shall in addition be liable to a penalty not exceeding five hundred dollars." Plaintiff sought to recover $67,632.54 allegedly collected by the defendant as such excess under color of the act imposing the sales tax and also to recover the penalty of $500. The Exchequer Court of Canada, ruled that the provision for the collection of the excess could

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not be considered as ancillary or incidental to the collection of the tax imposed, and that, with the exception of the provision imposing a penalty of $500. or less, the section was *"ultra vires* of the Parliament of Canada and consequently null and void." *The King v. Imperial Tobacco Co.,* (1938) 4 D. L. R. 95.

Louisiana.

In arriving at the basis of a Louisiana corporation's franchise tax, investments in shares of a foreign corporation are to be allocated to Louisiana. The State of Louisiana proceeded against defendant company to recover an additional franchise tax for 1933. The company, when submitting its report, based its tax on that portion of its capital stock, surplus and undivided profits represented by the value of real estate it owned in Louisiana. The State sought to have also assigned to Louisiana, for the purposes of the tax, shares which defendant owned in a Delaware company, which it had received the previous year in exchange for certain timber land. The Supreme Court of Louisiana ruled that such shares were not to be allocated out of the state on the theory that they were employed in business carried on outside the state, saying: "The mere fact that a domestic corporation has invested, in whole or in part, its capital stock, surplus and undivided profits in the capital stock of a foreign corporation, which is neither a subsidiary of the domestic corporation nor operated by it, affords no reason why such domestic corporation should not pay the tax here on the whole amount of its capital stock, surplus and undivided profits. One reason is—and this is sufficient—that the transactions relating to such investments are business dealings which must necessarily be consummated at the office of the company in this State. Domestic corporations are authorized to do business in this state. Here is where they are authorized by their charters to transact their business." "Another reason, if another need be stated, is that such investments are not excepted from the general rule that domestic corporations must pay to this State the franchise or license tax on the amount of their capital stock, surplus and undivided profits for the privilege either of carrying on, doing business or continuing their charters in this state." "The statute," concluded the court, "makes no mention of deductions for foreign investments." *State v. Burton Swartz Cypress Co.,** 183 So. 226; Commerce Clearing House Court Decisions Requisition No. 203564. Monroe & Leamann and Walter J. Suthon, Jr., of New Orleans, for appellant. Charles J. Rivet, Sp. Asst. to Atty. General, for the State.

* The full text of this opinion is printed in **The Corporation Tax Service,** Louisiana volume, page 1587.

New Jersey.

A New Jersey fire insurance company, assessed under section requiring assessment of such a company "in the taxing district where its office is situate, upon the full amount of its capital stock paid in

and accumulated surplus," held taxable in New Jersey on intangible property having a business situs in New York. A New Jersey general fire insurance corporation, the prosecutor, had its registered office in Newark, New Jersey. Its main office was in New York City, where its general business was conducted and all books kept except those required by law to be kept at the registered office in New Jersey. The business done by the company in Newark was confined to local regional underwriting and the adjustment of claims arising therefrom. Reports on such business were sent to the main office of the company in New York City. A small amount of cash and securities were kept in Newark, but the great majority of these items was either in the New York office or in banks in New York. The taxing authorities of Newark had assessed the company at Newark upon the intangibles kept there and also upon the intangibles which had become an integral part of the business situs in New York, and the corporation sought, by certiorari to the New Jersey Supreme Court, to have the assessment reduced on the ground that New Jersey had no jurisdiction to tax intangibles which had a business situs in New York. No personal property tax was paid in the State of New York on the intangibles. The court reviewed numerous decisions of the Supreme Court of the United States involving taxation of intangibles at the domicile of the owner and at places other than the domicile, and reached the conclusion that, although the question of whether the state of the domicile can still tax when the "business situs" theory applies is not free from doubt, there is authority in *Cream of Wheat Co. v. County of Grand Forks*, 253 U. S. 325, 40 S. Ct. 558, for holding in the instant case that the fact that the intangibles had a business situs in New York did not preclude their being taxed by New Jersey as the state of the domicile. The court pointed out that no multiple taxation was involved here, as the corporation did not pay a personal property tax in New York. (The assessment had been made under P. L. 1918, p. 858, Sec. 307 [now Sec. 54:4:-22, Revised Statutes of New Jersey, 1937], providing that "every fire insurance company and every stock insurance company other than life insurance, shall be assessed in the taxing district where its office is situate, upon the full amount of its capital stock paid in and accumulated surplus.") *Newark Fire Insurance Company v. State Board of Tax Appeals et al.*,* 118 N. J. Law 525, 193 Atl. 912. Arthur T. Vanderbilt of Newark, for prosecutor. Frank A. Boettner and John A. Matthews of Newark, for respondents. *Note:* The New Jersey Court of Errors and Appeals, at 198 Atl. 837, affirmed the judgment in a *per curiam* opinion reading: "The judgment under review should be affirmed for the reasons expressed in the opinion delivered by Mr. Justice Perskie in the Supreme Court, 118 N. J. Law 525." (*Appeal filed in the Supreme Court of the United States, October 31, 1938; Docket No. 449. Further consideration of the question of jurisdiction postponed to the hearing on the merits, November 21, 1938.*

* The full text of this opinion is printed in **The Corporation Tax Service, New Jersey volume, page 2595.**

Pennsylvania—New Jersey.

New Jersey franchise taxes held collectible where arising prior to receivership, during receivership and after commencement of proceedings under Section 77B. The State of New Jersey instituted an action in the District Court of the United States for the Western District of Pennsylvania to recover franchise taxes for the years 1933, 1934 and 1935, imposed by the laws of New Jersey upon the debtor corporation, all of the tangible assets of which were within Pennsylvania. The District Court had disallowed the claim of the State of New Jersey for the taxes. Upon appeal, however, the United States Circuit Court of Appeals, Third Circuit, took an opposite view. It ruled that the 1933 tax was, under the New Jersey law, due and owing upon January 1, 1933. This was prior to the appointment of receivers for the company and, in the view of the court, the State of New Jersey was to be regarded as a creditor and the tax was to be allowed as a claim as distinguished from an expense of administration. The 1934 tax arose during the period of the receivership. The court held that this tax was to be regarded as an expense of administration, as the right conferred upon a corporation by a franchise in order that it might exist was essential if the receivers were to carry on the business of the company. "The exercise of the franchise and its preservation," observed the court, "are benefits from which the receivers have profited. Equity will therefore compel payment for the benefits conferred." The 1935 tax was incurred after the commencement of proceedings under Section 77B of the Federal Bankruptcy Act. This, too, the court regarded as an expense of administration, as the trustees were charged with the preservation of the corporation as a going concern and were charged with the duty to preserve the corporate franchise. *The State of New Jersey v. Pressed Steel Car Company of New Jersey, Debtor, George D. Wick and Walter Bonitz, Trustees,** United States Circuit Court of Appeals, Third Circuit, November 5, 1938. Commerce Clearing House Court Decisions Requisition No. 204478. Margiotti, Pugliese, Evans & Buckley, of Pittsburgh, for appellant. Thorp, Bostwick, Reed & Armstrong, of Pittsburgh, for appellees.

* The full text of this opinion is printed in **The Corporation Tax Service**, New Jersey volume, page 1546.

Appealed to The Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

CALIFORNIA. Docket No. 302. *Felt and Tarrant Manufacturing Co. v. Corbett et al.*, 23 F. Supp. 186. (The Corporation Journal, June, 1938, page 208.) Validity of the California Use Tax. **Appeal filed, August 26, 1938. Probable jurisdiction noted, October 10, 1938. Argued, December 13, 1938.**

FEDERAL. Docket No. 328. *Guy T. Helvering, Commissioner of Internal Revenue, v. R. J. Reynolds Tobacco Company*, 97 F. 2d 302. (The Corporation Journal, December, 1938, page 279.) Federal income taxation—profits to corporation from trading in its own stock. **Appeal filed, September 8, 1938. Certiorari granted, October 17, 1938. On day call for January 3, 1939.**

NEW JERSEY. Docket No. 449. *Newark Fire Insurance Company v. State Board of Tax Appeals and the City of Newark*, 193 Atl. 912. (The Corporation Journal, January, 1939, page 302.) State Taxation —tax on intangible personal property of a domestic insurance company. **Appeal filed, October 31, 1938. Further consideration of the question of jurisdiction postponed to the hearing on the merits, November 21, 1938.**

WEST VIRGINIA. Docket No. 161. *United Artists Corporation v. James*, 23 F. Supp. 353. (The Corporation Journal, October, 1938, page 234.) Taxation of gross income from lease of motion picture films in interstate commerce. **Appeal filed, June 30, 1938. Probable jurisdiction noted, and further consideration of the motion to affirm postponed to the hearing of the case on the merits, October 10, 1938. Argued, December 9, 1938.**

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* Data compiled from CCH **U. S. Supreme Court Service, 1938-1939.**

Regulations and Rulings

ILLINOIS—The State's Attorney, Cook County, in answer to an inquiry of the Board of Tax Appeals of Cook County as to whether intangible assets of a foreign corporation, including its franchise, may be assessed to the corporation when either its main or branch office is located in Cook County, ruled that the franchise of such a corporation is not subject to a personal property tax, that the intangible assets are taxable only when acquiring a "business situs" by having become integral parts of some local business within the State and, further, that there is no statutory authority for taxation of the intangible assets of a foreign corporation which have not acquired a business situs within the state. (Illinois CT (Corporation Tax) Service, ¶ 24-520.)

INDIANA—The Gross Income Tax Division of the Department of Treasury has ruled that where it is the intention of the seller of either merchandise or service to add the Indiana gross income tax as a separate item, such intention should be prominently noted and be thoroughly understood before the purchase of the commodity or service is consummated. The Division has indicated that while a considerable number of business men handle the tax as a separate item in addition to their sales prices, the vast majority prefer to handle the tax as a business expense to be absorbed in their regular overhead, feeling that in so doing there is less irritation and less sales resistance from the customer. (Indiana CT, ¶ 15-021.)

KENTUCKY—An overpayment of the chain store license tax, made under a mistake of law, cannot be deemed to have been made involuntarily, as there is no provision in the act imposing the tax empowering the collecting officers to distrain the property of any concern liable for the tax, and therefore a refund of the overpayment may not be made. (Opinion of Attorney General to the Commissioner of Revenue, Kentucky CT, ¶ 41-803.)

MISSOURI—Receivers appointed by Federal courts are required to pay all taxes which have been assessed against property in receivership. (Opinion of Attorney General, Missouri CT, ¶ 2597.)

NEW YORK—There is no New York stock transfer tax imposed where there is a transfer of stock resulting from a merger or consolidation of two or more corporations, where the merger or consolidation is had under the New York Stock Corporation Law or under any law which is substantially the same as the New York Stock Corporation Law. (Ruling of the Department of Taxation and Finance, New York CT, ¶ 64-024.)

OKLAHOMA—The Secretary of State has been advised by the Attorney General that if the articles of incorporation of a proposed corporation do not disclose any unlawful purpose, the Secretary of State is authorized to issue a charter to the incorporators, and that the Secretary of State is not authorized by law to entertain protests to the issuance of a charter, nor to go behind the expressed purpose of the proposed corporation as set forth in its articles of incorporation. (Oklahoma CT, ¶ .402.)

Some Important Matters for January and February

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Notification Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

ALABAMA—Annual Application for Permit to do Business due on or before February 1.—Domestic and Foreign Corporations.

Report of Resident Stockholders and Bondholders due on or before February 1.—Domestic and Foreign Corporations.

ALASKA—Annual Report due within 60 days from January 1.—Domestic and Foreign Corporations.

ARKANSAS—Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

CALIFORNIA—Quarterly Retail Sales Tax Return and Payment due on or before January 15.—Domestic and Foreign Corporations.

Returns of Information at the source and Returns of Tax Withheld at the source due on or before February 15.—Domestic and Foreign Corporations.

COLORADO—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

CONNECTICUT—Annual Report due on or before February 15 (if corporation was organized or qualified between January 1 and June 30 of any previous year).—Domestic and Foreign Corporations.

DELAWARE—Annual Report due on or before first Tuesday in January.—Domestic Corporations.

DISTRICT OF COLUMBIA—Annual Report due between January 1 and January 20.—Domestic Corporations.

DOMINION OF CANADA—Returns of Information at the source due on or before February 28.—Domestic and Foreign Corporations.

ILLINOIS—Annual Report due between January 15 and February 28.—Domestic and Foreign Corporations.

INDIANA—Gross Income Tax Return and Payment due on or before January 31.—Domestic and Foreign Corporations.

Annual Report and License Fee of foreign finance companies due February 1.—Foreign Corporations engaged in the business of financing sales.

Returns of Information at the source due on or before January 31.—Domestic and Foreign Corporations.

Returns of Withholding at the source due on or before January 31.—Domestic and Foreign Corporations.

IOWA—Quarterly Retail Sales Tax Returns and Payment due on or before January 20.—Domestic and Foreign Corporations.

KANSAS—Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

KENTUCKY—Annual Report due on or before February 1.—Domestic and Foreign Corporations.

LOUISIANA—Annual Report due on or before February 1.—Domestic Corporations.

Capital Stock Statement due on or before March 1.—Foreign Corporations.

MAINE—Annual License Fee due on or before March 1.—Foreign Corporations.

MARYLAND—Returns of Information at the source and Returns of Tax Withheld at the source due on or before February 15.—Domestic and Foreign Corporations.

MASSACHUSETTS—Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

MINNESOTA—Annual Report due between January 1 and April 1.—Foreign Corporations.

Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

MISSOURI—Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

Annual Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

MONTANA—Annual Report of Capital employed due between January 1 and March 1.—Foreign Corporations qualified after February 27, 1915.

Annual Return of Net Income due on or before March 1.—Domestic and Foreign Corporations.

Annual Report due on or before March 1.—Domestic and Foreign Corporations.

NEW JERSEY—Annual Franchise Tax Return due on or before the first Tuesday in February.—Domestic Corporations.

NEW YORK—Annual Franchise Tax Report and Tax of Real Estate and Holding Corporations due between January 1 and March 1.—Domestic and Foreign Real Estate and Holding Corporations. Forms 41 C. T. and 42 C. T., Art. 9 of the Tax Law.

Returns of Information at the source and Returns of Tax Withheld at the source due on or before February 15.—Domestic and Foreign Corporations.

NORTH DAKOTA—Quarterly Retail Sales Tax Return and Payment due on or before January 20.—Domestic and Foreign Corporations.

OHIO—Report to Department of Industrial Relations due during January.—Domestic and Foreign Corporations employing three or more persons in Ohio.

Retail Sales Tax Return and Vendors' Excise Tax due on or before January 31.—Domestic and Foreign Corporations.

Annual Franchise Tax Report due between January 1 and March 31.—Domestic and Foreign Corporations.

OKLAHOMA—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

OREGON—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

PENNSYLVANIA—Report of Unclaimed Dividends, Credits, etc., due in January.—Domestic Corporations.

RHODE ISLAND—Annual Report due during February.—Domestic and Foreign Corporations.

Corporation Tax Return due on or before March 1.—Domestic and Foreign Corporations.

SOUTH CAROLINA—Annual Statement due on or before January 31.—Foreign Corporations.

Annual License Tax Report due during February.—Domestic and Foreign Corporations.

SOUTH DAKOTA—Annual Capital Stock Report due before March 1.—Foreign Corporations.

TEXAS—Annual Franchise Tax Report due between January 1 and March 15.—Domestic and Foreign Corporations.

UNITED STATES—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

UTAH—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

VERMONT—List of Stockholders due on or before January 31.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Annual Report due on or before March 1.—Domestic Corporations.

Annual License Tax Return and Payment due on or before March 1.—Domestic and Foreign Corporations.

VIRGINIA—Annual Registration Fee due on or before March 1.—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before March 1.—Domestic Corporations.

WEST VIRGINIA—Gross Sales Tax Return and Payment due on or before January 30.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets and forms, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York, N. Y.

When a Corporation Leaves Home. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

We've Always Got Along This Way. This is a 24-page pamphlet giving brief digests of cases in various states in which corporation officials who had thought they were getting along very well with corporate representation by a business employe suddenly found themselves penalized in unusual and often embarrassing ways: such as one company that had to pay its employe-representative's alimony.

What! *We* Need a Transfer Agent? Nonsense! The foregoing is the title of a pamphlet which describes in detail, with many illustrations, the exact steps through which a stock certificate goes in being transferred from one owner to another by an experienced transfer agent—purpose being to enable any corporation official to judge more accurately whether or not his own company should use the services of a transfer agent.

Judgment by Default. Gives the gist of Michigan Supreme Court case of Rarden v. Baker and similar cases in other states, showing how corporations qualified as foreign in any states and utilizing their business employes as corporate representatives are sometimes left defenseless in personal damage and other suits.

A Corporation's Achilles Heel. Containing the complete text of the opinion of the Supreme Court of the United States in State of Washington ex rel. Bond & Goodwin & Tucker, Inc. v. Superior Court, State of Washington, of the Supreme Court of New Mexico in Silva v. Crombie & Co., and of the Supreme Court of Michigan in Rarden v. R. D. Baker Co.—three decisions of great significance to attorneys of corporations qualified in one or more states.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation, completely revised to reflect the changes made by the amendments of 1937.

What Constitutes Doing Business. (Revised to September 1, 1937.) A 168-page book containing brief digests of decisions selected from those in the various states, as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index makes them accessible also by either case name or topic. There is also a section containing citations to cases on the question of doing business such as to make the company subject to service of process in the state.

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